STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-20-126

DELBERT A. REED, MAINE STATE CHAMBER OF COMMERCE, and INDUSTRIAL ENERGY CONSUMER GROUP,

Appellants,

v.

SECRETARY OF STATE MATTHEW DUNLAP, in his capacity of Secretary of State for the State of Maine, MAINERS FOR LOCAL POWER PAC, and NEXTERA ENERGY RESOURCES, LLC,

Appellees,

On Appeal from the Business and Consumer Court
Docket No. BCD-AP-20-02

BRIEF OF *AMICI CURIAE* FORMER MAINE STATE LEGISLATORS

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STATEMENT OF INTEREST OF *AMICI*

Amici are Senator Garrett Mason and Representative Kevin Battle. They are former members of the Maine Legislature who participated in the drafting of the laws at issue in this case. *Amici* have a strong interest in ensuring that these laws, which protect the integrity of the ballot initiative process, are interpreted correctly.

Senator Mason was a former member of the Maine State Senate and Senate Majority Leader. From 2010-2018, he represented Maine Senate District 22, which consists of Litchfield, Wayne, Durham, Greene, Leeds, Lisbon, Sabattus, Turner, and Wales. Senator Mason chaired the committee that adopted the law at issue in this case and voted for it in committee and on the floor.

Representative Battle served in the Maine House of Representatives from 2014-2018. He represented District 33, which consists of part of South Portland. Representative Battle also voted for the law at issue in this case.

SUMMARY OF ARGUMENT

Amici recognize the importance of ballot initiatives and referendums. Direct initiatives can allow for citizens to participate in the legislative process, encourage legislators to be responsive to the people, and protect against the concentration of political power in the hands of the powerful few. But the direct initiative process does not occur in a vacuum. States must ensure that the direct initiative process—and, in

particular, the process for gathering signatures—does not fall victim to fraud. Without proper safeguards, none of the goals of direct democracy can be achieved.

The Maine Legislature has taken a number of steps over the years to ensure the integrity of the direct initiative process. Maine has long required that those who gather signatures to support an initiative attest to the authenticity of the signatures and that all of the signatures were made in their presence. Maine law requires that this affirmation be made before a notary.

In recent years, however, the Legislature became concerned that notaries were participating in ballot campaigns and thus no longer serving as impartial actors in the process. In 2018, the Legislature adopted L.D. 1865, which drew a strict line preventing notaries from assisting ballot campaigns. The purpose of the new law was to resurrect the notaries' traditional role as neutral, impartial actors so as to reduce the opportunities for fraud in the initiative process.

The Secretary of State's decision in this case, however, disregards not just the plain text of the statute but also the Legislature's purpose. The Secretary concluded that individuals can serve as a notary and support a ballot campaign as long as they provide their support *after* they have notarized petitions. The Secretary also concluded that there was a "de minimis" exception that allowed notaries to provide certain ministerial benefits to ballot campaigns. None of this comports with the purpose and history of L.D. 1865. The purpose of the new law was to prevent a person from providing notarial and non-notarial services to the same ballot gathering campaign—regardless of the

order in which those services were performed and regardless whether the services could be considered "de minimis." If adopted, the Secretary's position would seriously undermine critical anti-fraud protections and the perception of notary impartiality. *Amici* urge the Court to reverse the decision below.

ARGUMENT

I. Safeguards are needed to reduce the risk of fraud in the ballot initiative and referendum processes.

Maine, like most other States, recognizes the right of its citizens to enact legislation through direct initiatives. Me. Const. art. IV, pt. 3, § 18. This Court has "recognized the importance" of this constitutional power, which has been "reserved to the people" and is an "absolute right." *McGee v. Sec'y of State*, 2006 ME 50, ¶¶ 21, 39 & n.7, 896 A.2d 933, 940, 944 & n.7. *Amici* agree. When exercised properly, direct democracy results in "greater citizen participation in the political process, a better-informed electorate, more responsive legislators, a safeguard against the concentration of political power in the hands of the few, and a means for putting new ideas on the political agenda." Stephen Shapiro, *The Referendum Process in Md.: Balancing Respect for Representative Gov't with the Right to Direct Democracy*, 44 U. Balt. L.F. 1, 7 (2013) (footnote omitted).

But these important goals are only achieved when the State vigilantly protects the direct initiative process. "[T]he people . . . have a right to rely on the integrity of the initiative process from beginning to end." *San Fran. Forty-Niners v. Nishioka*, 75 Cal. App.

4th 637, 649 (1999). One of the most important things a State can do is to "root out fraud, which not only may produce fraudulent outcomes, but has a systemic effect as well: It 'drives honest citizens out of the democratic process and breeds distrust of our government.'" *John Doe No. 1 v. Reed*, 561 U.S. 186, 197 (2010) (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) (per curiam)). Anti-fraud legislation "enhances the initiative process and promotes the confidence of the voters." *San Fran. Forty-Niners*, 75 Cal. App. 4th at 649.

"The threat of referendum fraud is not hypothetical." Michael D. Berman & Melissa O'Toole-Loureiro, *Referenda in Md.: The Need for Comprehensive Statutory Reform*, 42 U. Balt. L. Rev. 655, 764 (2013). For example, it is a "common practice" in America for circulators of referendum petitions to pull names out of "a telephone book directory to commit . . . fraud." *Whitley v. Md. State Bd. of Elections*, 429 Md. 132, 155 (2012); *see also Citizens Comm. for D.C. Video Lottery Terminal Initiative v. D.C. Bd. of Elections & Ethics*, 860 A.2d 813, 816 (D.C. App. 2004) (as part of a "a pervasive pattern of fraud, forgeries, and other improprieties that permeated the petition circulation process," circulators had "copied from the telephone books onto petition sheets" and "listed addresses on the affidavits that were non-existent or related to premises that were abandoned"); *In re Armentrout*, 99 Ill. 2d 242, 245 (1983) (circulators had engaged in so-called "roundtabling" where "[e]ach person signs a name obtained from a phone book or voter registration list and then passes the petition on to the person sitting next to him,

who does the same."); *Lombardi v. State Bd. of Elections*, 386 N.Y.S.2d 718, 719 (1976) (collections of signatures were "permeated with fraud").

Other egregious examples of fraud abound. In one case in Maryland, "petition circulators 'were flown [in] by signature collecting companies . . . put up in hotels and motels, and paid a bounty for each signature they could obtain.'" Alison Knezevich, *Baltimore Cty. referendum on zoning gets legal challenge*, The Baltimore Sun (Nov. 10, 2012), https://bit.ly/2RVnKHf (last visited Apr. 22, 2020). In Montana, circulators committed a "bait and switch" practice of "induc[ing] people who knowingly signed one petition to unknowingly sign . . . other [petitions]." *Montanans for Justice v. State ex rel. McGrath*, 334 Mont. 237, 260 (2006) ("[P]etition signers . . . attested that they were personally misled by a signature gatherer into signing . . . three initiatives when they intended to sign only one."). What is more, these "deceptive actions were [so] pervasive" that it was "impossible to precisely identify which certified signatures were untainted by [the] signature gatherers' various deceptive practices." *Id.* at 262.

Finally, in Maine, a man "purporting to be James Powell" collected signatures for a petition, but he was actually "an imposter who had stolen the identity of the real James Powell," and had therefore unlawfully collected 3,054 signatures. *MTAN v. Sec'y of State*, 2002 ME 64, ¶ 4, 795 A.2d 75, 77. Upon discovering the fraud, the Secretary of State invalidated the signatures. *See id.* In another case, "[t]he signature of a deceased town resident was discovered by an alert town clerk on a petition asking voters if they wanted the tax reform bill to go to a people's veto referendum in June. Upon further

review, the clerk discovered that every signature on the petition was invalid." John Christie, *Forgeries raise questions about role money plays in petition process*, Bangor Daily News (Feb. 3, 2010), https://bit.ly/2Y0fQ3v (last visited Apr. 22, 2020).

These examples are just the tip of the iceberg. Any time a State requires a certain number of signatures to put a measure before the people, there will always be a strong temptation for signature gatherers to cut corners, take shortcuts, or engage in outright fraud. Without proper safeguards, the direct initiative process will inevitably be tainted by fraud and will cease to fulfill its core purposes—bringing legislative power back to the people. Fraud prevention laws thus *promote*—not hinder—a robust and effective direct initiative process.

II. Maine has adopted critical protections to reduce the risk of fraud in the direct initiative process.

The Maine Constitution's Notary Requirement. Maine's direct initiative process reflects a careful balance between promoting the right of the people to enact legislation while safeguarding the integrity of the process. "By adding the direct initiative and referendum provisions to the Maine Constitution in 1909, the people took back to themselves part of the legislative power that in 1820 they had delegated entirely to the legislature." *Allen v. Quinn*, 459 A.2d 1098, 1098 (Me. 1983) (footnotes omitted). The direct initiative and referendum procedures were added through seven new sections (sections 16-22) to article IV, part 3 of the Maine Constitution. *See generally* Hon. Jeremy

R. Fischer, *Exercise the Power, Play by the Rules: Why Popular Exercise of Legislative Power in Maine Should be Constrained by Legislative Rules*, 61 Me. L. Rev. 503, 506-09 (2009).

Section 18 addresses the procedures for direct initiatives. Under section 18, "[t]he electors may propose to the Legislature for its consideration any bill, resolve or resolution . . . by written petition addressed to the Legislature or to either branch thereof and filed in the office of the Secretary of State by" a specific date tied to the convening of the Legislature. Me. Const. art. IV, pt. 3, § 18(1). "For any measure thus proposed by electors, the number of signatures shall not be less than 10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition." *Id.* § 18(2).

Section 20, in turn, contains important protections to safeguard the integrity of the signature gathering process. Under Section 20, any petition with signatures must be "verified as to the authenticity of the signatures by the oath of the circulator that all of the signatures to the petition were made in the presence of the circulator and that to the best of the circulator's knowledge and belief each signature is the signature of the person whose name it purports to be." *Id.* § 20. The petition must be "signed and notarized and submitted to the office of the Secretary of State." *Id.* A signature of the circulator alone is insufficient. Section 20 also expressly recognizes the Legislature's authority to regulate the notarization process for ballot initiatives. *Id.*

As this Court has recognized, "the circulator's oath is critical to the validation of a petition." *MTAN*, 2002 ME 64, ¶ 13. "[T]he integrity of the initiative and referendum

process in many ways hinges on the trustworthiness and veracity of the circulator." *Id.* The Maine Constitution incorporates the circulator's oath "to assure that the circulator is impressed with the seriousness of his or her obligation to honesty, and to assure that the person taking the oath is clearly identified should questions arise regarding particular signatures." *Id.* "Without [these] assurances … the Secretary of State [would] not have evidence to support a finding that the petitions were in fact signed by the requisite number of registered voters and that the signatures [were] not fraudulent." *Birks v Dunlap*, No. BCD-AP-16-04, 2016 WL 1715405, at *5 (Bus. & Consumer Ct. Apr. 08, 2016, *Murphy, J.*). "The failure to sign the oath in the presence of the notary public is therefore an error of constitutional import," and can be "fatal to an entire petition." *MTAN*, 2002 ME 64, ¶ 13.

Preventing Fraud in the Notary Process. In 2016, parties seeking to adopt two ballot initiatives—one pertaining to a casino and one pertaining to marijuana legalization—submitted signatures to the Secretary of State. *See Birks*, 2016 WL 1715405, at *1; *Greenlaw v. Dunlap*, BCD-AP-16-05, at 1 (Bus. & Consumer Ct. Apr. 7, 2016, *Murphy, J.*), *available at* https://bit.ly/2VRYEKL. After reviewing the petitions, the Secretary concluded that he had no choice but to invalidate tens of thousands of the signatures. *See Birks*, 2016 WL 1715405, at *2; *Greenlaw*, BCD-AP-16-05, at 3; *see also* Michael Shepherd, *Less than half of casino question signatures deemed valid*, Bangor Daily News, (Mar. 2, 2016), https://bit.ly/2VNUOCh (last visited Apr. 22, 2020); Michael

Shepherd, *Judge controls fate of Maine marijuana legalization vote*, Bangor Daily News (Mar. 30, 2016), https://bit.ly/34TNVU2 (last visited Apr. 22, 2020).

The Secretary invalidated the signatures because, among other reasons, "the signature of the notary listed as having administered the oath did not match the signature on file and it could not be determined that the signature was made by that person." Matthew Dunlap, *Determination of the Validity of a Petition for Initiated Legislation Entitled: "An Act to Legalize Marijuana,"* at 1 (Mar. 2, 2016), *available at* https://bit.ly/2Koz1fb. In particular, it was discovered that a significant number of the invalidated signatures had been notarized by one person, Stavros Mendros, whose firm had been hired by the proponents of both initiatives to assist in the collection of signatures. *See* Gillian Graham, *Marijuana campaign sues state over disqualified petition signatures*, Portland Press Herald (Mar. 10, 2016), https://bit.ly/3av5n2y (last visited Apr. 20, 2020).

According to the Secretary of State, "[i]t was clear just by looking at the documents that somebody had a stack of petitions and somebody was just notarizing them." Matt Byrne, *York County casino campaign appeals decision preventing ballot question*, Portland Press Herald (Mar. 12, 2011), https://bit.ly/3av5n2y. As the Secretary later testified, it became "alarmingly apparent to us that there was no way to determine that the [circulator] oaths had been properly administered, and that the notarial act was not performed in the manner prescribed in Title 4." *An Act to Amend the Direct Initiative Signature Gathering Process: Hearing on L.D. 1323 Before the J. Standing Comm. on Veterans &*

Legal Affrs., 128th Legis. (2017) (testimony of Matthew Dunlap, Secretary of State), https://bit.ly/3avoARs [hereinafter Dunlap Testimony].

In the wake of these serious problems, the Legislature in 2017 sought to enact additional safeguards to prevent fraud in the initiative process. The Legislature was aware that signature collection companies frequently used notaries affiliated with ballot campaigns to fulfill the law's notarization requirement. *See, e.g., An Act to Amend the Direct Initiative Signature Gathering Process: Hearing on L.D. 1323 Before the J. Standing Comm. on Veterans & Legal Affrs.*, at 2, 128th Legis. (2017) (testimony of David Trahan, Sportsman's Alliance of Maine), *available at* https://bit.ly/2Vu2laE (describing how Maine signature collection companies "use their spouses, relatives and friends, sometimes paid, to notarize petitions on the same referendum they work"). The Legislature was concerned that this lack of independence could mar the integrity of the direct initiative process. As Secretary of State Matt Dunlap testified, "[t]he integrity of the citizen initiative and people's veto process rides entirely on faith." Dunlap Testimony at 1, https://bit.ly/3avoARs. Without assurances that "each signature was made by a registered Maine voter, and was solicited by a registered Maine voter," the public would lack confidence "that questions that appear on the ballot [were put] there with unimpeachable integrity." *Id.* at 1-2.

This concern caused the Legislature to adopt L.D. 1323, which added new fraud-prevention measures to protect the notary process and required that the notaries validating petitions be independent of ballot campaigns. *See* P.L. 2017, ch. 277, § 5,

available at https://bit.ly/3buQnTE. Under the new law (Section 903-D), a notary public or other person authorized by law to administer oaths or affirmations could not notarize or certify a petition if the person: (1) was "employed or compensated by a petition organization for any purpose other than notarial acts"; (2) was "providing services or offering assistance to a ballot question committee established to influence the ballot measure for which the petitions are being circulated or employed by or receiving compensation from such a ballot question committee for any purpose other than notarial acts"; or (3) was a "treasurer, principal officer, primary fundraiser or primary decision maker to a ballot question committee established to influence the ballot measure for which petitions are being circulated." *Id.* at § 5; *see* 21-A M.R.S. § 903-D (2017).

In 2018, the year after L.D. 1323 was enacted, the Secretary of State submitted an omnibus bill to the Legislature requesting various changes to the State's election code. In particular, the Secretary proposed to amend Section 903-D to remove the words "or offering assistance." *See* L.D. 1726, § 19 (128th Legis. 2018), *available at* https://bit.ly/3cxS1ns. According to Julie Flynn, the Deputy Secretary of State, the phrase "or offering assistance" was unclear, and her office had "received numerous questions from current petition groups as to the meaning" of the phrase. *An Act To Amend the Laws Governing Elections, Hearing on L.D. 1726 Before the J. Standing Comm. on Veterans & Legal Affrs.*, at 2, 128th Legis. (2017) (testimony of Julie L. Flynn, Deputy Secretary of State), https://bit.ly/3aqzMil. In addition, she testified, the scope of the

phrase "providing services" in Section 903-D also was not "sufficiently clear." *Id.* The Secretary of State's office thus asked the Legislature: "Is it the Legislature's intent that a notary public who is a volunteer (i.e., unpaid) providing notarial services to a ballot question committee . . . can provide no other services to the effort, such as alphabetizing petitions by town, delivering notarized petitions to the municipalities for verification of the signers, helping to organize the forms for submission to the state, etc.?" *Id.*

The Legislature subsequently passed L.D. 1865, which confirmed that, yes, the Legislature did intend to draw a clear, firm line prohibiting a notary public from providing *any services*—no matter how small—to a ballot question committee. *See* P.L. 2018, ch. 418, *available at* https://bit.ly/2VN8f5v. In L.D. 1865, the Legislature eliminated Section 903-D and replaced it with a new section (Section 903-E), which eliminated any ambiguities about the role notaries could play in a signature gathering campaign. *Id.* §§ 2-3; *see also An Act to Increase Transparency in the Direct Initiative Process: Hearing on L.D. 1865 Before the J. Standing Comm. on Veterans & Legal Affrs.*, at 1, 128th Legis. (2018) (testimony of Rep. Loui Luchini, Maine State Legislature), https://bit.ly/2yECinR (noting that LD 1865 "adds clarifying language around notaries that we discussed earlier this session"); *An Act to Increase Transparency in the Direct Initiative Process: Hearing on L.D. 1865 Before the J. Standing Comm. on Veterans & Legal Affrs.*, at 1, 128th Legis. (2018) (testimony of Julie L. Flynn, Deputy Secretary of State),

https://bit.ly/2VKnQTk (acknowledging that L.D. 1865 "clarif[ies] the questions we had about the prior conflict provisions").

Under the new law (Section 903-E), a notary public cannot "administer an oath or affirmation to the circulator of a petition" where that notary public also provides "any other services, regardless of compensation, to initiate the direct initiative" or provides any "services other than notarial acts, regardless of compensation, to promote the direct initiative." P.L. 2018, ch. 418, § 3, *available at* https://bit.ly/2VN8f5v, *see* 21-A. M.R.S. § 903-E (2018). By eliminating the distinction between notaries who are paid and those who volunteer, Section 903-E made clear that there must be a clear, unequivocal line preventing notaries from providing *any* activities promoting a direct initiative.

In L.D. 1865, the Legislature also added provisions identifying these activities as a conflict of interest for notaries. *See* 4 M.R.S. § 954-A (2018). Under the new law, in addition to being a conflict of interest to perform notary services for family members, *see infra* § 3, it was now a conflict of interest for a notary public "to administer an oath or affirmation to a circulator of a petition for a direct initiative or people's veto referendum under Title 21-A, section 902 if the notary public also provides services that are not notarial acts to initiate or promote that direct initiative or people's veto referendum." P.L. 2017, ch. 418, § 1, *available at* https://bit.ly/2VN8f5v; *see* 4 M.R.S. § 954-A. This provision reinforced that the Legislature meant what it said—that there must be a strict line between notaries and a ballot initiative campaign.

In adopting these measures, the Legislature knew that the new requirements might cause some administrative burdens. According to one opponent of L.D. 1865, ballot initiatives often "enlist the help of hundreds upon hundreds of volunteers" and it is "enormously cumbersome to instruct volunteers on how to get their petitions notarized when . . . the only options for convenient times [are] oftentimes banks or town clerks, both of which have limited hours and some of which charge for their services." *An Act to Increase Transparency in the Direct Initiative Process: Hearing on L.D. 1865 Before the J. Standing Comm. on Veterans & Legal Affrs.*, at 1, 128th Legis. (2018) (testimony of Taryn Hallweaver, Maine People's Alliance), https://bit.ly/2VJoe4w. Yet the Legislature firmly believed that any such inconveniences were far outweighed by the fraud-prevention benefits of the new law. The Legislature ultimately adopted L.D. 1865 because requiring "organizing groups to find an objective, third-party notary to certify their signatures" was "imperative to ensure ethical behavior by all operatives of a ballot question campaign." *An Act to Increase Transparency in the Direct Initiative Process: Hearing on L.D. 1865 Before the J. Standing Comm. on Veterans & Legal Affrs.*, at 1, 128th Legis. (2018) (testimony of Jacob Posik, Maine Heritage Policy Center), https://bit.ly/2XVTTm4.

III. The Secretary's interpretation of Section 903-E is flatly contrary to the Legislature's purpose in enacting that law.

As this history makes clear, the Legislature unquestionably never intended to create the loopholes to the notary requirement that the Secretary of State now seeks to recognize. L.D. 1865 was designed to ensure that notaries were independent of direct

initiative campaigns. The Secretary's decision, however, ignores not just the legislative history of L.D. 1865, *supra* § 2, but also the entire purpose and history of the notary process in Maine.

The notary process is deeply engrained in American history. *See generally* Michael L. Closen & Trevor J. Orsinger, *Family Ties That Bind, and Disqualify: Toward Elimination of Family-Based Conflicts of Interest in the Provision of Notarial Services*, 36 Val. U. L. Rev. 505, 512-48 (2002) (reviewing "the 350 year history of notaries" in England and America); Informed Notaries of Maine, *History of INM*, https://bit.ly/2VM0L2K (describing how Maine's Office of Notary Public was created in 1821, one year after Maine joined the Union). Today, notaries in Maine "act[] as a liaison between the government and its citizens." State of Me., Dep't of Sec'y of State, *Notary Public Handbook and Resource Guide* at iii, *available at* https://bit.ly/3cy1hrC ("*Notary Public Handbook*"). Notaries are charged with, among other things, "administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents." 4 M.R.S. § 1011 (1969).

Notarizing a document is not a mere formality or rubber stamp, as the Secretary of State's decision seems to suggest. "Notarization is the official fraud-deterrent process that assures the parties of a transaction that a document is authentic, and can be trusted. It is a three-part process, performed by a Notary Public, that includes of vetting, certifying and record-keeping." *What Is Notarization?*, National Notary Association, *available at* https://bit.ly/3at73JQ (last visited Apr. 22, 2020). "Above all, notarization

is the assurance by a duly appointed and impartial Notary Public that a document is authentic, that its signature is genuine, and that its signer acted without duress or intimidation, and intended the terms of the document to be in full force and effect." *Id.* "Every day the process of notarization prevents countless forged, coerced and incompetent signings that would otherwise . . . dissolve the network of trust allowing our civil society to function." *Id.*

The Secretary's decision also disregards the critical importance of impartiality in the notary process. Indeed, "[i]mpartiality on the part of a notary is universally expected." Closen & Orsinger, *supra*, at 506 (citation omitted); *see also* National Notary Association, *The Notary Public Code of Professional Responsibility*, at 1 (2020), *available at* https://bit.ly/2Ks0koN ("The Notary shall act as an impartial witness and not profit or gain, nor attempt to profit or gain, from a notarial act, apart from the fee for the notarial act and any charge associated with the fee, if applicable."). Maine has long recognized that "[a] Notary Public must not act in any official capacity if there is any interest which may affect impartiality." *Notary Public Handbook* at 18. For example, the State for decades has prohibited a notary public from performing "any notarial act for any person if that person is the notary public's spouse, parent, sibling, child, spouse's parent, spouse's sibling, spouse's child or child's spouse." 4 M.R.S. § 954-A. This conflict of interest statute was enacted to ensure impartiality in the notary process, as "the impartiality and professionalism of notaries are necessarily compromised when

they serve as notaries for their own family members," and "intra-family notarizations must create the appearance of impropriety." Closen & Orsinger, *supra*, at 510.

In light of this history, the Legislature clearly did not intend for the result allowed by the Secretary of State. The Legislature never would have created an exception that allowed notaries to participate in campaigns as long as they did it *after* they notarized the petitions. The whole point of L.D. 1865 was to ensure that notaries maintained their traditional impartiality by creating a rule of strict separation between notaries and ballot campaigns. L.D. 1865 prohibits a person from providing notarial and non-notarial services to the same ballot gathering campaign—regardless of the order in which those services are performed. It would defeat the Legislature's purpose of ensuring the impartiality of notaries if the loophole recognized here were allowed.

The Legislature also never would have intended to create a "de minimis" exception for activities by a notary in a ballot campaign. The integrity of the direct initiative process (and notaries in general) depend on clear, understandable rules. If the Legislature wanted to allow notaries to perform "de minimis" or ministerial functions for campaigns, it easily could have provided for that exception. *See Covanta Maine, LLC v. Pub. Utilities Comm'n*, 2012 ME 74, ¶ 16, 44 A.3d 960, 964-65 ("If the legislature wanted to place a quantitative requirement on the expenditures . . . it could have done so. Because the Legislature did not include this type of requirement, it was an error of law for the Commission to graft this added requirement onto the Maine statute."). It

did not. The text, legislative history, and broader purpose of L.D. 1865 all make clear that notaries must be impartial and strictly separated from any ballot campaign—period.

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

Dated: April 23, 2020

Respectfully submitted,

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